IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.729 OF 2005

Namdeo Savliram Ahire .. Appellant

Versus

Lata Pundalik Bhadane and Ors. .. Respondents

Mr.Rajiv Hardas i/b P.N.Joshi for appellant.

Mr.M.M.Sathye for respondents.

CORAM : P.V.KAKADE, J.

DATE : 3rd August, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl.District Judge, Malegaon dated 12.10.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Satana partly decreeing the suit.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiffs filed the suit for declaration to the effect that the defendant had no right, title or possession over the suit property and therefore, he should be restrained from obstructing plaintiff's possession. By subsequent amendment, the plaintiffs have alternatively prayed that the possession of the suit property be handed over to them. The defendant contested the suit on the ground that he was in possession of the suit property by agreement of sale executed by the parties and therefore, sought protection under Section 53A of the Transfer of Property Act.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that it was established that the defendant was in possession of the suit property by virtue of the agreement between the plaintiffs' father and himself dated 1.7.1981. However, the plaintiffs were entitled for the relief of declaration, their ownership title as well as possession of the suit property and the suit came to be decreed in part. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties came to the conclusion that the findings

recorded by the trial court were legal and proper and dismissed the appeal. Hence the present appeal.

4. At the outset it may be noted that there is no substantial question of law involved in this appeal. The learned counsel for the appellant sought to submit that the appellant was admittedly in possession of the suit property by virtue of agreement of sale dated 1.7.1981 and therefore, he was entitled to protect his possession by virtue of Section 53-A of the Transfer of Property Act and also under Section 43 of the B.T. & A.L.Act. However, on perusal of the entire evidence on record it is seen that Section 43 of the B.T. & A.L Act has no application in the present case. The record also shows that the appellant is not entitled to the protection contemplated under Section 53-A of the Transfer of Property Act, and therefore, both the courts below have concurrently held that the suit deserves to be decreed to the terms of the order passed by the trial court. Taking into account the fact that both the courts below have appreciated the evidence on record in proper perspective and therefore, no interference is called for and hence the appeal stands dismissed with no order as to costs.

. Consequently Civil Application No.1240 of 2005 also stands dismissed with no order as to costs.

5. At this stage the learned counsel for the appellant seeks stay of this order. In view of the facts and circumstances the order stands stayed for a period of six weeks.